IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1041 of 2003

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUNAGADH DISTRICTA PANCHAYAT

Versus

HARDASBHAI MULUBHAI VADAN

Appearance:

MR HS MUNSHAW for Appellant

MR CHETAN P PANDYA for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 03/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C.PATEL)

1. The appellant-Junagadh District Panchayat filed Special Civil Suit No.132/99 in the Court of 5th Joint Civil Judge, Senior Division, Junagadh, praying for a decree of Rs.2,86,682/- with interest against the

respondent-defendant. The respondent filed an application Exh.43 contending that the plaintiff was a local body constituted under the Gujarat Panchayats Act and it was a public undertaking as defined in The Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "the Act") and therefore the Civil Court had no jurisdiction to entertain the suit in view of the provisions of section 13 of the said Act.

2. The learned Civil Judge, by his order dated 23.10.2002, allowed the said application and ordered the plaint to be returned for presentation before the proper authority in accordance with the provisions of Order 7, Rule 10 of CPC. The District Panchayat has, therefore, filed this appeal challenging the said order.

3. The learned Advocate for the appellant submits that even though it is a dispute relating to works contract, it is not a works contract as defined in Section 2(k) of the Act and between the parties contemplated by Section 2(k) of the Act. Section 2(e) defines dispute as under:

> " `Dispute' means any difference relating to any claim, valued at any amount equal to or exceeding fifty thousand rupees, arising out of the execution or non-execution of the whole or part of a works contract".

Works contract is defined in Section 2(k) as under:

> " `Works contract' means a contract made by the State Government or the Public Undertaking with any other person for the execution of any of its works relating to construction, repairs or maintenance of any building or superstructure, dam, well, canal, reservoir, tank, lake, road, well, bridge, culvert, factory or workshop or of such other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette specify and includes ..."

Admittedly, said works contract is not a contract made by the State Government or any public undertaking. Public undertaking is defined in Section 2(i) which means a company in which not less than fifty-one per cent of the paid up share capital is held by the State Government or any company which is a subsidiary or any corporation established by or under a Central Act or a State Act and owned or controlled by the State Government and such

class of local authorities as the State Government may by notification in the Official Gazette specify. There is no such notification. It is thus clear that the dispute is not covered by the definition of the dispute "Works Contract" in Section 2(k) of the Act and therefore, under the Act, the Arbitration Tribunal cannot entertain this dispute.

4. In the
of the trial court is quashed and set aside and the trial court is directed to proceed with the suit in accordance with law. The appeal is allowed. No order as to costs.

[KSHITIJ R. VYAS, J.] [M.C. PATEL, J.]
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